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ELIZABETH L. SHIELDS, Plaintiff)	U.S. DISTRICT COURT DISTRICT OF MASS.
v.)	CASE NO. 04 12431GAO
KENNETH VAN VOORHIS, JR.,)	
JOSEPH ELETTO TRANSFER, INC. and)	
AA TRUCK RENTING CORPORATION,)	
Defendants)	

DEFENDANT'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

Now come the defendants, Kenneth Van Voorhis, Jr., Joseph Elletto Transfer, Inc. and AA Truck Renting Corporation, and hereby move pursuant to F.R.C.P. 12(b)(1) for an order dismissing this case for lack of subject matter jurisdiction. In this regard the defendants state it does not appear that this matter satisfies the \$75,000 amount in controversy threshold that is necessary for jurisdiction under 28 U.S. C. § 1332.

In support of this motion, the defendants state it appears that the plaintiff incurred less than \$3000 in medical expenses to treat the physical injuries that were allegedly sustained as a result of the subject motor vehicle accident (Exhibit A). The defendants further state that in a pre-suit claim letter, counsel for the plaintiff advised that the plaintiff's physical injuries were diagnosed as follows: "spondyliolisthesis (traumatic) ...lumbar strain. Left thoracic paraspinal strain" (Exhibit B). Finally it further appears that the plaintiff's medical treatment consists of an emergency room visit on the date of the accident (June 25, 2003), outpatient physical therapy and outpatient follow-up care by an orthopedist.

Even if there is diversity of citizenship among the parties, there is no subject matter jurisdiction under 28 U.S.C. § 1332 if the claim does not satisfy the \$75,000 amount in controversy threshold.

Based on the information set forth above, it appears to a legal certainty that the claim is for less than the jurisdictional amount. Accordingly, this court lacks subject matter jurisdiction and the case should be dismissed. St. Paul v. Mercury Indemnity Co. v. Red Cab Co., 303 U.S. 283, 289 (1938) (dismissal for failure to satisfy jurisdictional threshold appropriate when it appears "to a legal certainty that the claim is really for less than the jurisdictional amount"); See also Speilman v. Genzyme Corp., 251 F. 3d 1, 5 (1st Cir 2001) (once defendant challenges sufficiency of damage allegations, burden is on plaintiff to allege "with sufficient particularity facts indicating that it is not a legal certainty that claim involves less than the jurisdictional amount") (quoting Dep't of Recreation and Sports v. World Boxing Ass'n, 942 F. 2d 84, 88 (1st Cir. 1991).

WHEREFORE, the defendants request that this matter be dismissed for lack of subject matter jurisdiction.

Respectfully submitted

Paul R. Keane, BBO # 262880 Michael J. Keefe, BBO # 263751

Attorneys for the Defendants

Martin, Magnuson, McCarthy & Kenney

101 Merrimac Street, 7th Floor

Boston, MA 02114

617-227-3240

CERTIFICATE OF SERVICE

I, Michael J. Keefe, counsel for the defendants, hereby certify that on the 3rd day of February, 2005, I served the above document mailing a copy thereof, postage prepaid to Sal J. Germani, Esq., Germani & Germani, P.C., 50 Union Street, P. O. Box 2178, Attleboro, MA 02703.

Paul R. Keane, BBO # 252880

Michael J. Keefe, BBO # 263751

Attorneys for the Defendants

Martin, Magnuson, McCarthy & Kenney 101 Merrimac Street, 7th Floor

Boston, MA 02114

617-227-3240

GERMANI & GERMANI, P.C.

DEC - 8 2003

ATTORNEYS AND COUNSELORS AT LAW 50 UNION STREET P.O. BOX 2178 ATTLEBORO, MA 02703

TEL: (508) 222-5858 FAX: (508) 222-9906 December 2, 2003 SAL J. GERMANI

of Counsel VINCENT M. GERMANI DALE E. ROSE*

*MA & RI BAR

John Chiappardi Claims Representative Atlantic Risk Management, Inc. P. O. Box 4001 9 Old Kings Highway South Darien, CT 06820-4001

Insured: Joseph Eletto Transfer, Inc. Our Client: Elizabeth Shields RE:

Claim #: 1-16987

Date/Loss:

06/25/03

Dear Mr. Chiappardi:

We are enclosing copies of physical therapy records from Orthopedic Group, Inc. covering the period September 15, 2003 through October 2, 2003, along with the charges for these final treatments in the amount of \$704.00. Also enclosed is a copy of a bill for \$35.00 from Attleboro Radiology for services on June 25, 2003.

Total medical expenses to date are \$2,970.75.

Kindly review this claim and contact me once you have completed your evaluation.

Thank you.

Very truly yours,

GERMANI & GERMANI, P.C.

SJG/jog Enclosures

SEP 2 3 2003

GERMANI & GERMANI, P.C.

ATTORNEYS AND COUNSELORS AT LAW 50 UNION STREET P.O. BOX 2178 ATTLEBORO, MA 02703

TEL: (508) 222-5858 FAX: (508) 222-9906

September 17, 2003

SAL J. GERMANI

of Counsel VINCENT M. GERMANI DALE E. ROSE*

*MA & RIBAR

John Chiappardi Claims Representative Atlantic Risk Management, Inc. P. O. Box 4001 9 Old Kings Highway South Darien, CT 06820-4001

Insured: Joseph Eletto Transfer, Inc. Our Client: Elizabeth Shields RE:

Claim #: 1-16987

06/25/03 Date/Loss:

Dear Mr. Chiappardi:

In response to your letter of September 4, 2003, we are enclosing herewith the following documents relative to the above-referenced claim:

> Medical Records Medical Bills

Dr. Poggi makes the following diagnosis: Diagnosis #1: spondylolisthesis L5/S1 (traumatic); Diagnosis #2: lumbar strain. Left thoracic paraspinal strain.

I have enclosed one page of text regarding spondylolisthesis and trauma.

Ms. Shields is still undergoing physical therapy treatments. We will provide additional records when treatment has ended and we have received the remainder of her records.

As a reminder, we have not as yet been notified of your Insured's limits of liability coverage. Kindly advise.

Very truly yours,

GERMANI & GERMANI, P.C.

SJG/jog

Enclosures